

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY,

Plaintiff,

v.

R. MEJIA, et al.,

Defendants.

Case No. 1:23-cv-01631-EPG (PC)

ORDER TO ASSIGN A DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION BE
DISMISSED FOR FAILURE TO STATE A
CLAIM, FAILURE TO PROSECUTE, AND
FAILURE TO COMPLY WITH A COURT
ORDER

(ECF Nos. 1, 9).

OBJECTIONS, IF ANY, DUE WITHIN THIRTY
DAYS

Plaintiff Raymond Bailey is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. (ECF Nos. 1, 7). Plaintiff filed his complaint on November 21, 2023, alleging that six prison correctional officers violated his constitutional rights by not assuring his safety and not attending to his medical needs.

On January 22, 2024, the Court screened the complaint and concluded that Plaintiff failed to state any cognizable claims. (ECF No. 9). The Court gave Plaintiff thirty days to file an amended complaint or to notify the Court that he wanted to stand on his complaint. (*Id.* at 10). And the Court warned Plaintiff that “[f]ailure to comply with this order may result in the dismissal of this action.” (*Id.*).

The thirty-day deadline has passed, and Plaintiff has not filed an amended complaint or

1 otherwise responded to the Court’s order. Accordingly, for the reasons below, the Court will
 2 recommend that Plaintiff’s case be dismissed for failure to state a claim, failure to prosecute, and
 3 failure to comply with a court order.

4 **I. SCREENING REQUIREMENT**

5 The Court is required to screen complaints brought by prisoners seeking relief against a
 6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 7 Court must dismiss a complaint, or a portion of it, if the prisoner raises claims that are frivolous
 8 or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary
 9 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)-(2). Because
 10 Plaintiff is proceeding *in forma pauperis*, the Court may also screen the complaint under 28
 11 U.S.C. § 1915, which requires a court to dismiss a case if it is frivolous or malicious, fails to state
 12 a claim, or seeks monetary relief from an immune defendant. 28 U.S.C. § 1915(e)(2)(B)(i-iii).

13 A complaint is required to contain “a short and plain statement of the claim showing that
 14 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
 15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
 16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
 17 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
 18 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
 19 *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this
 20 plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are not
 21 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681
 22 (9th Cir. 2009) (citation and quotation marks omitted). Additionally, a plaintiff’s legal
 conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

23 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
 24 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
 25 *pro se* complaints should continue to be liberally construed after *Iqbal*).

26 **II. ALLEGATIONS IN THE COMPLAINT**

27 Plaintiff is incarcerated at the California Substance Abuse Treatment Facility (CSATF) in
 28 Corcoran, California, and alleges that the incidents at issue happened in Corcoran. He sues the

1 following six CSATF correctional officers: (1) R. Mejia; (2) J. Martinez; (3) D. Hicks; (4) J.
2 Caballos¹; (5) Pelafox; and (6) Wilson. Plaintiff brings three claims:

3 For his first claim, Plaintiff alleges “cruel and unusual punishment – negligence.”²
4 Plaintiff states that, on an unidentified date, he was trying to use the restroom on the B-Facility
5 Yard and his “wheel got stuck in the gutter around the sidewalk leading to the urinal,” which
6 caused him to fall and land on his side. Defendants Mejia, Martinez, Wilson, and an unknown
7 correctional officer, sat across the Yard in front of B-3 and never once activated their emergency
8 devices. Plaintiff “laid on the concrete for a few moments” and two inmates asked if he wanted
9 assistance since no one had come to his aid. Plaintiff asked for assistance, and they “rolled” him
10 to the nurse’s office. A nurse, who is not listed as a defendant in this case, said that she saw no
11 evidence that Plaintiff had fallen and told him to leave. The nurse did not test or check his vitals.
12 Upon passing the officers, not one of them asked about his wellbeing. Plaintiff generally indicates
13 that his back and shoulders were injured.

14 For his second claim, Plaintiff alleges “cruel and unusual punishment (right to safety) –
15 negligence.” Plaintiff states that, on an unidentified date, he was “rolling back from getting [his]
16 medication” and his “walker wheel got caught on a huge bulge in the blacktop in from of 1
17 Block.” His walker fell backwards with him on it, and he hit his head on the blacktop and blacked
18 out. While he was “down and out” his “chair was still underneath [him].” Defendant Pelafox, who
19 is not a medical professional, “snatched the chair” from under his lower torso, and Plaintiff’s legs
20 hit the ground and a sharp pain ran through his back. At some point, the alarm was activated, an
21 ambulance arrived, and Plaintiff ended up in the hospital.

22 For his third claim, Plaintiff alleges “cruel and unusual punishment – negligence – right to
23 safety.” Plaintiff states that, on September 2 of an unidentified year, he was leaving the hospital
24 and was placed in a transportation van that did not have a lift for his walker. He asked Defendants
25 Hicks and Caballos to call for a transport that had a lift for his walker. The officers ordered him to
26 get in the transport vehicle and said that “they got me,” which Plaintiff took to mean that they

27 ¹ Plaintiff alternatively refers to this Defendant as “Caballos” and “Cabellos.” The Court uses “Caballos”
28 for consistency.

² For readability, minor alterations, such as correcting misspellings and altering capitalization, have been
made to Plaintiff’s complaint without identifying each change.

1 would help him. Both of the officers lifted him into the vehicle, with Plaintiff being shackled
 2 around his ankles and waist. Plaintiff asked to be unshackled, but was again told, “we got you.”
 3 As Plaintiff stepped out of the vehicle, Defendant Caballos held his walker stable while Hicks
 4 was supposed to assist Plaintiff in getting down. Plaintiff’s knees went out and he began to fall.
 5 Hicks stepped out of the way and allowed Plaintiff to fall. Plaintiff was 67 years old, with both
 6 knees “blown,” and weighed close to 400 lbs. All of his weight landed on the walker, bruising his
 7 ribs and damaging other joints in addition to his pre-existing injuries.

8 Plaintiff asks for unspecified monetary damages and “medical support” in his request for
 9 relief.

10 **III. ANALYSIS OF PLAINTIFF’S COMPLAINT**

11 **A. Section 1983**

12 The Civil Rights Act under which this action was filed provides as follows:

13 Every person who, under color of any statute, ordinance, regulation, custom, or
 14 usage, of any State or Territory or the District of Columbia, subjects, or causes to
 15 be subjected, any citizen of the United States or other person within the
 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
 secured by the Constitution and laws, shall be liable to the party injured in an
 action at law, suit in equity, or other proper proceeding for redress

16 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
 17 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490
 18 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); *see also*
 19 *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*,
 20 697 F.3d 1059, 1068 (9th Cir. 2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9th Cir.
 21 2012); *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

22 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
 23 color of state law, and (2) the defendant deprived him of rights secured by the Constitution or
 24 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *see also Marsh*
 25 *v. County of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state
 26 law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he
 27 does an affirmative act, participates in another’s affirmative act, or omits to perform an act which
 28 he is legally required to do that causes the deprivation of which complaint is made.’” *Preschooler*
II v. Clark County Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v.*

1 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established
2 when an official sets in motion a ‘series of acts by others which the actor knows or reasonably
3 should know would cause others to inflict’ constitutional harms.” *Preschooler II*, 479 F.3d at
4 1183 (quoting *Johnson*, 588 F.2d at 743). This standard of causation “closely resembles the
5 standard ‘foreseeability’ formulation of proximate cause.” *Arnold v. Int’l Bus. Mach. Corp.*, 637
6 F.2d 1350, 1355 (9th Cir. 1981); *see also Harper v. City of Los Angeles*, 533 F.3d 1010, 1026
7 (9th Cir. 2008).

8 A plaintiff must demonstrate that each named defendant personally participated in the
9 deprivation of his rights. *Iqbal*, 556 U.S. at 676-77. In other words, there must be an actual
10 connection or link between the actions of the defendants and the deprivation alleged to have been
11 suffered by the plaintiff. *See Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691, 695
12 (1978).

13 Supervisory personnel are not liable under § 1983 for the actions of their employees under
14 a theory of *respondeat superior* and, therefore, when a named defendant holds a supervisory
15 position, the causal link between the supervisory defendant and the claimed constitutional
16 violation must be specifically alleged. *Iqbal*, 556 U.S. at 676-77; *Fayle v. Stapley*, 607 F.2d 858,
17 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). To state a claim for
18 relief under § 1983 based on a theory of supervisory liability, a plaintiff must allege some facts
19 that would support a claim that the supervisory defendants either: were personally involved in the
20 alleged deprivation of constitutional rights, *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989);
21 “knew of the violations and failed to act to prevent them,” *Taylor v. List*, 880 F.2d 1040, 1045
22 (9th Cir. 1989); or promulgated or “implement[ed] a policy so deficient that the policy itself is a
23 repudiation of constitutional rights and is the moving force of the constitutional
24 violation,” *Hansen*, 885 F.2d at 646 (citations and internal quotation marks omitted).

25 For instance, a supervisor may be liable for his or her “own culpable action or inaction in
26 the training, supervision, or control of his [or her] subordinates,” “his [or her] acquiescence in the
27 constitutional deprivations of which the complaint is made,” or “conduct that showed a reckless
28 or callous indifference to the rights of others.” *Larez v. City of Los Angeles*, 946 F.2d 630, 646
(9th Cir. 1991) (citations, internal quotation marks, and brackets omitted).

B. Deliberate Indifference

The Eighth Amendment prohibits “cruel and unusual punishments.” U.S. Const. amend. VIII. While Plaintiff’s claims differ somewhat, each alleges that Defendants were deliberately indifference to some substantial risk of serious harm to him in violation of the Eighth Amendment. *See Farmer v. Brennan*, 511 U.S. 825, 828, 114 S. Ct. 1970, 1974, 128 L. Ed. 2d 811 (1994) (“A prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.”).

Two requirements must be met to show an Eighth Amendment violation. *Id.* at 834. “First, the deprivation alleged must be, objectively, sufficiently serious.” *Id.* (citation and internal quotation marks omitted). Second, “a prison official must have a sufficiently culpable state of mind,” which for purposes of this case, “is one of deliberate indifference.” *Id.* (citations and internal quotation marks omitted). Prison officials act with deliberate indifference when they know of and disregard an excessive risk to inmate health or safety. *Id.* at 837. “The circumstances, nature, and duration of [the Eighth Amendment claim] must be considered in determining whether a constitutional violation has occurred.” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2006). Mere negligence on the part of a prison official is not sufficient to establish deliberate indifference. *Farmer*, 511 U.S. at 835.

For the reasons explained below, Plaintiff has failed to state any cognizable deliberate indifference claim.

The Court begins its analysis with Plaintiff’s first claim—that after falling due to his wheel getting stuck, Defendants Mejia and Martinez did not activate their emergency devices or inquire about his wellbeing. As to the first prong, while Plaintiff generally states that he had an “injury to [his] back [and] shoulders,” he does not indicate that this injury arose from staying on the ground, rather than from the fall itself, which was not due to Defendants’ failure to assist him.

As to the second prong, while Plaintiff states that Defendants Mejia and Martinez were across the yard when he fell, he does not allege facts that they observed the incident, let alone that they were subjectively aware of a serious risk to harm but disregarded the risk. Rather, according to Plaintiff, just “a few moments” after he fell, two inmates came to his aid and took him to the nurse’s office.

1 The Court turns to Plaintiff's second claim—that he fell after his walker wheel got caught
2 on a bulge in the blacktop and that Defendant Pelafox, who is not a medical professional,
3 improperly removed “the chair” from under him causing Plaintiff a sharp pain in his back.
4 However, Plaintiff does not allege that Defendant Pelafox knew of the bulge or fail to correct it.
5 Even if Plaintiff did make such allegations, there is no evidence that the bulge in the blacktop was
6 left their intentionally, rather than due to some negligence on the part of prison officials (which is
7 discussed further below).

8 Likewise, as to the allegation that Pelafox improperly removed the chair from under
9 Plaintiff, causing him back pain after his legs hit the ground, there is nothing to indicate that these
10 circumstances rise to the level of deliberate indifference. Even assuming that Plaintiff's injury
11 was sufficiently serious, there is nothing to show that Pelafox would have recognized an
12 excessive risk to Plaintiff's health by removing the chair from under him or that he disregarded
13 any risk to Plaintiff's health by removing the chair in a wanton manner. Rather, the fact that
14 Plaintiff fell and Pelafox then removed the chair from under him, along with Plaintiff being
15 transported to the hospital thereafter, indicates that Pelafox was attempting to help Plaintiff, albeit
16 potentially in a negligent way. However, negligence does not rise to the level of deliberate
indifference.

17 The Court turns to Plaintiff's third and final claim—that he fell after Defendants Hicks
18 and Caballos failed to get him a van with a lift for his walker. Beginning with the first prong,
19 while Plaintiff generally indicates that he bruised his ribs and damaged his joints, he does not
20 allege facts to indicate that such injuries were sufficiently serious. *See Vilchis v. City of*
21 *Bakersfield*, No. 1:10-CV-00893 LJO, 2012 WL 113747, at *12 (E.D. Cal. Jan. 13, 2012) (“Even
22 assuming the truth of Plaintiff's assertions that he had visible injuries to the head and face, the
23 evidence in the record describes those injuries to be abrasions and contusions, with some
24 associated bleeding. This does not rise to the level of a ‘serious medical need,’ for purposes of the
25 Eighth Amendment.”).

26 As for the second prong, there is nothing to indicate that either Hicks or Caballos
27 recognized and then disregarded an excessive risk to Plaintiff by not obtaining a van with a lift.
28 Rather, by Plaintiff's telling, both Defendants attempted to help him out of the vehicle. Caballos

1 held Plaintiff's walker while Plaintiff got out. While Plaintiff claims that Hicks allowed him to
2 fall by stepping out of the way after Plaintiff's knees gave out, there is nothing to indicate that
3 Hicks failed to prevent the fall in a manner amounting to deliberate indifference.

4 In short, Plaintiff has failed to state a claim upon which relief may be granted.

5 **C. Negligence**

6 Plaintiff also appears to allege independent claims for negligence under California law.
7 However, even if Defendants might have acted negligently in violation of state law, this is a
8 Federal court and the § 1983 lawsuit that Plaintiff has filed applies to violations of Federal law.

9 If Plaintiff has a constitutional claim, the Court may agree to include related state law
10 claims. Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
11 jurisdiction, the district court "shall have supplemental jurisdiction over all other claims in the
12 action within such original jurisdiction that they form part of the same case or controversy under
13 Article III of the United States Constitution." "Pendent jurisdiction over state claims exists when
14 the federal claim is sufficiently substantial to confer federal jurisdiction, and there is a 'common
15 nucleus of operative fact between the state and federal claims.'" *Brady v. Brown*, 51 F.3d 810,
16 816 (9th Cir. 1995) (quoting *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 421 (9th Cir.1991)).
17 "[O]nce judicial power exists under § 1367(a), retention of supplemental jurisdiction over state
18 law claims under 1367(c) is discretionary." *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th
19 Cir. 1997). The Supreme Court has cautioned that "if the federal claims are dismissed before
20 trial, . . . the state claims should be dismissed as well." *United Mine Workers of America v. Gibbs*,
383 U.S. 715, 726 (1966).

21 Here, Plaintiff has not stated a cognizable federal claim. Accordingly, the Court does not
22 have jurisdiction over any state law claims.

23 Moreover, a plaintiff can sue a California government employee for a tort claim, such as
24 negligence, only if the plaintiff complies with California's Government Claims Act. Under this
25 Act, prior to bringing a tort claim (such as negligence) against a public entity or its employees,
26 the claim must have been presented to the California Victim Compensation and Government
27 Claims Board, formerly known as the State Board of Control, no more than six months after the
28 cause of action accrued. Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950-950.2. Presentation of

1 a written claim, and action on or rejection of the claim, are conditions that must be met prior to
 2 filing a lawsuit against the government employee. *State v. Superior Court of Kings County*
 3 (*Bodde*), 32 Cal.4th 1234, 1245 (Cal. 2004); *Mangold v. California Pub. Utils. Comm’n*, 67 F.3d
 4 1470, 1477 (9th Cir. 1995). To state a cognizable tort claim against a state employee, a plaintiff
 5 must allege compliance with the Government Claims Act. *Karim-Panahi v. Los Angeles Police*
 6 *Dept.*, 839 F.2d 621, 627 (9th Cir. 1988); *Bodde*, 32 Cal.4th at 1245; *Mangold*, 67 F.3d at 1477.
 7 Here, Plaintiff has failed to allege compliance with California’s Government Claims Act.

8 Accordingly, Plaintiff has failed to state a cognizable tort claim against Defendants.

9 **IV. FAILURE TO PROSECUTE AND COMPLY WITH A COURT ORDER**

10 The Court will likewise recommend dismissal based on Plaintiff’s failure to prosecute this
 11 case and to comply with the Court’s screening order.

12 In determining whether to dismiss a[n] [action] for failure to prosecute or failure to
 13 comply with a court order, the Court must weigh the following factors: (1) the
 14 public’s interest in expeditious resolution of litigation; (2) the court’s need to
 15 manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the
 16 availability of less drastic alternatives; and (5) the public policy favoring
 17 disposition of cases on their merits.

18 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d
 19 1258, 1260-61 (9th Cir. 1992)).

20 ““The public’s interest in expeditious resolution of litigation always favors dismissal.””
 21 *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly, this
 22 first factor weighs in favor of dismissal.

23 As to the Court’s need to manage its docket, “[t]he trial judge is in the best position to
 24 determine whether the delay in a particular case interferes with docket management and the
 25 public interest. . . . It is incumbent upon the Court to manage its docket without being subject to
 26 routine noncompliance of litigants. . . .” *Id.* Plaintiff has failed to respond to the Court’s
 27 screening order or file anything since screening. This failure to respond and prosecute is delaying
 28 the case and interfering with docket management. Therefore, the second factor weighs in favor of
 dismissal.

Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
 and of itself to warrant dismissal.” *Id.* (citing *Yourish*, 191 F.3d at 991). However, “delay

1 inherently increases the risk that witnesses' memories will fade and evidence will become stale,"
2 *id.* at 643, and it is Plaintiff's failure to comply with a court order and to prosecute this case that
3 is causing delay. Therefore, the third factor weighs in favor of dismissal.

4 As for the availability of lesser sanctions, given that Plaintiff has chosen not to prosecute
5 this action and has failed to comply with the Court's order, despite being warned of possible
6 dismissal, there is little available to the Court which would constitute a satisfactory lesser
7 sanction while protecting the Court from further unnecessary expenditure of its scarce resources.
8 Considering Plaintiff's incarcerated status, it appears that monetary sanctions are of little use.
9 And given the stage of these proceedings, the preclusion of evidence or witnesses is not available.
10 Therefore, the fourth factor weighs in favor of dismissal.

11 Finally, because public policy favors disposition on the merits, this factor weighs against
12 dismissal. *Id.*

13 After weighing the factors, the Court finds that dismissal is appropriate.

14 **V. CONCLUSION, ORDER, AND RECOMMENDATIONS**

15 Based on the forgoing, IT IS ORDERED that the Clerk of Court shall assign a District
16 Judge to this case.

17 Further, IT IS RECOMMENDED as follows:

18 1. This action be dismissed for failure to state a claim, failure to prosecute, and
19 failure to comply with a court order; and

20 2. The assigned District Judge dismiss Plaintiff's § 1983 claims with prejudice.

21 3. The assigned District Judge dismiss any state law claims without prejudice.

22 4. The Clerk of Court be directed to close this case.

23 These findings and recommendations are submitted to the United States district judge
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
25 days after being served with these findings and recommendations, Plaintiff may file written
26 objections with the Court. Such a document should be captioned "Objections to Magistrate
27 Judge's Findings and Recommendations."
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1 Plaintiff is advised that failure to file objections within the specified time may result in the
2 waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing
3 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4 IT IS SO ORDERED.

5
6 Dated: March 7, 2024

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE